

1 MR. BEGLEITER: Well, we raised one before, Your
2 Honor. But in light of Your Honor's other rulings, we will
3 not object.

4 JUDGE SIPPEL: Thank you. It's received in
5 evidence without any concession of relevance by Liberty, but
6 it's received in evidence as TW/CV's Number 21.

7 (The document referred to,
8 previously marked for
9 identification as TW/CV
10 Exhibit Number 21, was
11 received in evidence.)

12 MR. BECKNER: I'll note for the record, Your
13 Honor, that as far as we're concerned, the exhibit contains
14 a lot of irrelevant material as well. But in the interest
15 of maintaining the entirety of the exhibit, we're offering
16 the entire document as opposed to pieces of it. And, for
17 example, it includes an affidavit from Richard Arellio who
18 is the president of Time Warner Cable, New York City, which
19 we don't think is relevant. But the point is is that we
20 think we're obligated to offer the entire document and not
21 chunks of it.

22 JUDGE SIPPEL: That's -- that's -- you can't
23 unring the bell. If it's -- whether relevant or not, it's
24 in the record. And it's close enough.

25 MR. BECKNER: Right. Number 22 is at Tab 28 in

1 our notebook. It's a one page document, a letter from Dewey
2 Dwong of Concert -- I'm sorry, a letter to Dewey Dwong of
3 Concert from Behrooz Nourain, dated June 30, 1995.

4 JUDGE SIPPEL: It will be marked for
5 identification -- how many pages -- this is just a one page
6 document.

7 MR. BECKNER: A one page document.

8 JUDGE SIPPEL: -- marked for identification as
9 TW/CV Number 22.

10 (The document referred to was
11 marked for identification as
12 TW/CV Exhibit Number 22.)

13 Any objection to it coming in?

14 MR. BEGLEITER: Yes, Your Honor. Relevance.

15 JUDGE SIPPEL: You want to make a proffer now or
16 do you want to wait?

17 MR. BECKNER: I'd just assume wait, Your Honor.

18 JUDGE SIPPEL: Okay. It's rejected now subject to
19 being re-offered at the hearing.

20 (The document referred to,
21 previously marked for
22 identification as TW/CV
23 Exhibit Number 22, was
24 rejected.)

25 Okay. That takes care of TW/CV Number 22. Your

1 next one.

2 MR. BECKNER: Number 23 is at Tab 29 in the
3 notebook. It's a two page memorandum from Peter Price to
4 John Tenety, Tony Ontiveros and Behrooz Nourain, dated
5 7/13/95. And I'll note for the record it has some
6 redactions on the second page. It's on the subject of FCC
7 compliance.

8 JUDGE SIPPEL: Let me mark it first. It's going
9 to be marked for identification as TW/CV Number 23. And
10 it's a two page document.

11 (The document referred to was
12 marked for identification as
13 TW/CV Exhibit Number 23.)

14 Yes, Mr. Begleiter?

15 MR. BEGLEITER: Well, we have no objection to it.
16 But I will note that the documents that Mr. Beckner is going
17 to be offering into evidence next are part of this document.
18 So it seems to me the reasonable thing to do is make it
19 one -- make it one exhibit.

20 MR. HOLT: Well, Your Honor, if I could speak to
21 that, I'm not quite sure that they are part of this
22 document. I believe they were produced as part of this
23 document. But I think questions were raised during the
24 examination as to whether or not the documents that were
25 produced in that sequence actually were attachments to this

1 document. And I would not want to associate them as a
2 single exhibit.

3 JUDGE SIPPEL: Well, I'll leave it to Mr. Beckner
4 and Mr. Holt. This is their side of the case, so I'll let
5 them present it. That's reasonable reason. I'll let it
6 come in that way. Okay. Then as you've identified,
7 Document Number 23 which is the two page document on FCC
8 compliance, that's identified and it is also received into
9 evidence as you have described it, Mr. Beckner --

10 MR. BECKNER: All right.

11 JUDGE SIPPEL: -- as TW/CV Number 23.

12 (The document referred to,
13 previously marked for
14 identification as TW/CV
15 Exhibit Number 23, was
16 received in evidence.)

17 Now, your next document then.

18 MR. BECKNER: Exhibit 24 is at Tab 30 in our
19 notebook. And it is a -- an eight page document entitled,
20 "A List, Activated Buildings with Flawed Licenses", on the
21 first page. And it lists, among other things, a number of
22 the addresses that are identified in the appendices to the
23 HDO. And also, I'll note for the record that some pages of
24 this document are completely redacted. But I'm including
25 the entire exhibit since that's the way it was produced to

1 us.

2 JUDGE SIPPEL: Okay. What is the -- is there a
3 date on this document?

4 MR. BECKNER: I -- as I recall, no, there's not a
5 date specifically on the document. And there was testimony
6 about when it was prepared I believe.

7 JUDGE SIPPEL: Well, then we can refer to it as an
8 undated document.

9 MR. BECKNER: Yes.

10 JUDGE SIPPEL: All right. That's -- again, what
11 we're talking about is what's been marked for identification
12 as TW/CV Number 24, the eight page undated document.

13 (The document referred to was
14 marked for identification as
15 TW/CV Exhibit Number 24.)

16 Is there any objection to it being received?

17 MR. BEGLEITER: No, Your Honor.

18 JUDGE SIPPEL: It's in evidence as TW/CV Number
19 24.

20 (The document referred to,
21 previously marked for
22 identification as TW/CV
23 Exhibit Number 24, was
24 received in evidence.)

25 Next?

1 MR. BECKNER: Okay. Number 25 -- let's see if we
2 have all these this time. Number 25 is at Tab 31 of our
3 notebook. And it is a copy of Liberty's applications for
4 modifications to microwave licenses, dated July 17, 1995.
5 And there are the associated documents with the
6 applications.

7 JUDGE SIPPEL: Okay. That's a -- that's a fairly
8 thick document.

9 MR. BECKNER: Yes. I don't -- I don't have all
10 the pages numbered. I can't tell you how many pages there
11 are.

12 JUDGE SIPPEL: All right.

13 MR. BECKNER: The first page is the transmittal
14 letter from Pepper & Corazzini.

15 JUDGE SIPPEL: Apparently, yes, under Mr.
16 Lehmkuhl's name?

17 MR. BECKNER: It appears to be signed by Mr.
18 Lehmkuhl.

19 JUDGE SIPPEL: It will be marked for
20 identification then as TW/CV 25.

21 (The document referred to was
22 marked for identification as
23 TW/CV Exhibit Number 25.)

24 Any objection?

25 MR. BEGLEITER: Yes, Your Honor. Relevance

1 grounds.

2 JUDGE SIPPEL: Do we wait or do you want to argue
3 it now, Mr. Beckner?

4 MR. BECKNER: Well, again, Your Honor, this is a -
5 - this is a -- an application for microwave paths that --
6 that previously were activated. The application doesn't
7 disclose that fact to the FCC. And the question is is at
8 the time the application was filed, did Liberty -- or did
9 Mr. Nourain in particular know that these paths were already
10 turned on. I mean, he's the one that signed the Form 402.

11 JUDGE SIPPEL: These relate to the licenses that
12 are at issue here?

13 MR. BECKNER: Yes, they are.

14 JUDGE SIPPEL: What's the --

15 MR. BEGLEITER: Well, Your Honor, I thought the
16 issue in the hearing was going to be as to when Liberty was
17 aware of the premature activations. And that -- everybody -
18 - I think everyone will concede that sometime after April or
19 May, whenever we're talking about -- after April, Liberty
20 knew.

21 MR. BECKNER: Well, I mean, if counsel wants to
22 stipulate that Liberty knowingly filed an application with a
23 material omission, then I guess we can short circuit this.

24 JUDGE SIPPEL: Well, it -- it -- yes, it becomes -
25 - it -- if I'm following the logic here, it -- on your

1 theory, Mr. Beckner, it becomes a misleading document if
2 Liberty misrepresented as to the date that they learned
3 about the unauthorized activations. Am I correct in that?

4 MR. BECKNER: That's true. Yes, Your Honor.

5 JUDGE SIPPEL: All right.

6 MR. BEGLEITER: But we have -- okay. I'm not
7 going to argue the case now.

8 JUDGE SIPPEL: No, it's -- I mean, I'm saying,
9 we're only talking about relevance for purposes of asking
10 questions about it. It's -- all right. Then it's -- the
11 objection is overruled. And what has been marked as Number
12 25 for identification is received as TW/CV Number 25.

13 (The document referred to,
14 previously marked for
15 identification as TW/CV
16 Exhibit Number 25, was
17 received in evidence.)

18 MR. BECKNER: Okay. Document -- Exhibit 26 is at
19 Tab 32. It's a one page document which is entitled,
20 "Correspondence Received July 19, 1995." And I'll just note
21 for the record it was Exhibit 4 to Mr. Price's deposition of
22 May 28.

23 JUDGE SIPPEL: Is this -- do we assume this to
24 be -- it doesn't have any title on it. Is this a Liberty
25 document -- a Liberty-generated business document?

1 MR. BECKNER: Yes. Yes, it was identified by Mr.
2 Price in his deposition.

3 JUDGE SIPPEL: Any objection?

4 MR. BEGLEITER: Relevance, Your Honor. We don't
5 know why it's being offered.

6 JUDGE SIPPEL: Do you want to wait or do you want
7 to do it know?

8 MR. BECKNER: We'll wait. I think we can satisfy
9 the issue of relevance at the right time.

10 JUDGE SIPPEL: I will -- it's -- it's rejected
11 with the right to renew at the hearing.

12 (The document referred to was
13 marked for identification as
14 TW/CV Exhibit Number 26 and
15 was rejected.)

16 MR. BECKNER: All right. Number 27. Number 27 is
17 a copy of Liberty's STA requests filed July 24, 1995 with a
18 transmittal letter signed by Mr. Mike Lehmkuhl. And these
19 STA requests are for some of the paths that are identified
20 in the appendix to the HDO.

21 JUDGE SIPPEL: All right. Be careful how you --
22 I'm sort of hearing you as saying SDA and what we're talking
23 about is STA, T as in Thomas, so that the record picks this
24 up. And that's going to be marked for identification, TW/CV
25 Number 27.

1 (The document referred to was
2 marked for identification as
3 TW/CV Exhibit Number 27.)

4 Any objection?

5 MR. BEGLEITER: Well, Your Honor, we would have an
6 objection. However, in light of the fact that Your Honor
7 has -- has -- has permitted the -- has permitted the
8 evidence the application two exhibits ago -- let me go back
9 a second to explain what's going on. Mr. -- Mr. Beckner
10 offered into evidence and it was accepted an application.
11 It was Number -- let me go back, Your Honor.

12 MR. BECKNER: 25.

13 MR. BEGLEITER: Yes, Number 25, that's right.
14 This STA is -- relates to Number 25. And this STA discloses
15 that a path that was not authorized that is being -- that is
16 being used. So I would -- I guess my -- I guess I have an
17 objection. But in light of the -- in light of Your Honor's
18 previous ruling, I'd like that noted but I'd like the
19 document in evidence now to count as it related to Time
20 Warner/Cablevision 25.

21 JUDGE SIPPEL: All right. So you're noting the --
22 the lack of relevance. But nonetheless, you're -- you're
23 not objecting to it's being received into evidence.

24 MR. BEGLEITER: At this point, no, I'm not.

25 JUDGE SIPPEL: All right. Well, it's in. When

1 it's in, it's in. I mean, it's in.

2 MR. BEGLEITER: Well, Your Honor, if they would
3 both go, I would -- I would -- if Number 25 wasn't in
4 evidence, this one also would not be in evidence. I mean,
5 I'm in a quandary. I have to -- since -- Your Honor's
6 already decided that Number 25 is relevant and should be
7 heard, I need this document to explain Number 25.

8 JUDGE SIPPEL: All right. Then it's -- over your
9 characterization of this document as being something that we
10 should not have in evidence, I'm going to receive it into
11 evidence --

12 MR. BEGLEITER: Okay.

13 JUDGE SIPPEL: -- as TW/CV Number 27.

14 (The document referred to,
15 previously marked for
16 identification as TW/CV
17 Exhibit Number 27, was
18 received in evidence.)

19 MR. BECKNER: Okay. Number 28 -- TW/CV Number 28
20 is at Tab 34 in the notebook. And it is a copy of a two
21 page letter to Howard Barr, Henry Rivera and Bob Pettit from
22 Howard Davenport of the FCC. It is another 308(b) request.

23 JUDGE SIPPEL: Any objection?

24 MR. BEGLEITER: Well, Your Honor, I've got the
25 same problem I have with the previous exhibit. There is a

1 relationship between this exhibit and the previous two --
2 and 25 and 27. So I would like my -- I would like my
3 objection -- I would like that characterization noted for
4 the record.

5 JUDGE SIPPEL: All right. Well, so in other
6 words, you're not going to -- you're not going to waive your
7 objection.

8 MR. BEGLEITER: No.

9 JUDGE SIPPEL: All right. This is a two page
10 document. It's been marked for identification as TW/CV 28.
11 It's received into evidence as 28.

12 (The document referred to was
13 marked for identification as
14 TW/CV Exhibit Number 28 and
15 was received in evidence.)

16 MR. BECKNER: Okay. Number 29 is at Tab 35 in the
17 notebook. And it is the affidavit of Lloyd Constantine.
18 And it's a -- it's --

19 JUDGE SIPPEL: Three pages?

20 MR. BECKNER: It's a three page document. I'll
21 note for the record that -- just to avoid any confusion --
22 Tab 35 also includes a short affidavit of Peter Price which
23 I'm not intending to include in the exhibit. Just by way of
24 explanation --

25 JUDGE SIPPEL: Oh, I see. Yes, I see. Well, why

1 don't we just take the short affidavit of Peter Price out.

2 MR. BECKNER: That's correct. That's what I'm
3 doing. But I just want to let you know what I'm doing so --

4 JUDGE SIPPEL: I appreciate that.

5 MR. BECKNER: So it's just three pages, the
6 affidavit of Lloyd Constantine dated --

7 JUDGE SIPPEL: September 20, 1995?

8 MR. BECKNER: Yes.

9 JUDGE SIPPEL: Any objection?

10 MR. BEGLEITER: Yes, Your Honor. It's -- this
11 declaration -- this affidavit -- the sum and substance of
12 this affidavit is the internal investigative report. Let me
13 also talk about the one before. The one -- Number 28 also
14 discussed the internal investigative report. However, in
15 addition, it talked about the four paths that are related to
16 25 and 27, Time Warner/CV. This one there is no -- there is
17 no subject matter other than the internal investigative
18 report. Therefore, it's irrelevant. That's not at issue in
19 this -- in this proceeding.

20 JUDGE SIPPEL: Are you going to ask a witness
21 about this?

22 MR. BECKNER: I certainly am. I think the
23 relevance is quite obvious. At paragraph 3, Mr. Constantine
24 says, "In late April, 1995, Liberty's chairman, Howard
25 Milstein, became aware that Liberty was providing service to

1 two customers" -- "to customers in two buildings in New York
2 City utilizing microwave paths that had pending but not yet
3 granted applications." Now, the fact is is that Mr.
4 Milstein testified in deposition in this case that he didn't
5 know anything about this until after he learned of Time
6 Warner's paper which was filed on May 5th.

7 JUDGE SIPPEL: Okay. I hear you. I've heard
8 enough on that one. I'm going to overrule the objection and
9 it's going to come in. But it's understood that we're not
10 going to get into -- we're not going to use any of this as a
11 way of trying to get into the contents, the substance or
12 anything having to do with that audit report.

13 MR. BEGLEITER: Can we have the same direction,
14 Your Honor, with regard to Time Warner/CV 28?

15 JUDGE SIPPEL: To the extent that that's a
16 concern, that's -- that would be --

17 MR. BECKNER: Your Honor, let me -- I mean, it's
18 not my intention to get into the audit report. But let me
19 just agree with counsel about his characterization of 28.
20 28 doesn't mention any audit report. It says we're doing an
21 audit. And there's a big difference between doing an audit
22 or having a report. But just to reassure Mr. Begleiter, I'm
23 not intending to use either of these exhibits as a lever to
24 get into the audit report.

25 JUDGE SIPPEL: And I will be very -- I mean, I,

1 again, will be very -- very up front about my concern about
2 this. I think that -- that it is significant to see
3 information that's relevant to this case and that's material
4 to this case that was subject to this audit report to which
5 both I as the -- as the finder of the fact and opposing
6 counsel are being -- are being deprived. Now, I'm not
7 saying that there isn't a reason as to why we shouldn't be
8 deprived. What I'm simply saying is I look upon that as
9 being a -- a detriment to developing a full record in this
10 case.

11 MR. BEGLEITER: Well, Your Honor --

12 JUDGE SIPPEL: I've said this before. This is
13 nothing new.

14 MR. BEGLEITER: Yes. I guess this is not the time
15 to argue that. We respectfully disagree.

16 JUDGE SIPPEL: I recognize that.

17 MR. BECKNER: Okay.

18 MR. BEGLEITER: And just to be clear, Your Honor,
19 since this was mentioned, it is -- it is in opposition that
20 Liberty knew in late April of 1995 about the -- about these
21 unauthorized -- began to know about these unauthorized paths
22 in late April of 1995. We'll have evidence -- we'll have
23 testimony which will discuss it.

24 JUDGE SIPPEL: All right.

25 MR. BEGLEITER: Okay.

1 JUDGE SIPPEL: That's what we're here for. That's
2 what we're here for. But I -- you know, again, I -- I do
3 acknowledge the fact that that issue with respect to the
4 privilege in that report is not before me; it's not in this
5 hearing. It's elsewhere. So I'm not going to get into
6 that.

7 JUDGE SIPPEL: Now, that was Number 29 -- your
8 TW/CV -- the affidavit of Lloyd Constantine has been marked
9 for identification as Number 29. It's a three page document
10 and it's received in evidence at this time as TW/CV Number
11 29.

12 (The document referred to was
13 marked for identification as
14 TW/CV Exhibit Number 29 and
15 was received in evidence.)

16 MR. BECKNER: Okay. TW/CV Number 30 -- maybe it's
17 not even necessary, but we'll do it -- is at Tab 36. And
18 that's simply a copy of Appendix A and Appendix B to the
19 HDO.

20 JUDGE SIPPEL: How many pages is this?

21 MR. BECKNER: It's two pages.

22 JUDGE SIPPEL: Any objection?

23 MR. BEGLEITER: No.

24 JUDGE SIPPEL: Okay. That document then is marked
25 as TW/CV Number 30 and it's received in evidence as Number

1 30.

2 (The document referred to was
3 marked for identification as
4 TW/CV Exhibit Number 30 and
5 was received in evidence.)

6 Next document.

7 MR. BECKNER: Number 31 is the two page
8 declaration of Peter Price, dated July 18, 1996, filed in --
9 in this proceeding -- that is, in the hearing proceeding.
10 That's at Tab 37 in the notebook. And it concerns Mr.
11 Price's knowledge about the Lehmkuhl memorandum of February
12 24th, 1995.

13 JUDGE SIPPEL: Any objection?

14 MR. BEGLEITER: None, Your Honor.

15 JUDGE SIPPEL: All right. A two page document
16 marked for identification as 32; received in evidence -- I'm
17 sorry, that's 31.

18 MR. BECKNER: That's 31, yes, sir.

19 JUDGE SIPPEL: And that's received in evidence as
20 TW/CV Number 31.

21 (The document referred to was
22 marked for identification as
23 TW/CV Exhibit Number 31 and
24 was received in evidence.)

25 Your next document.

1 MR. BECKNER: The next document is at Tab 38 in
2 our notebook. It's a two page declaration of Behrooz
3 Nourain, dated July 22, 1996. And it also was filed in this
4 hearing proceeding and concerns the same subject as the
5 previous exhibit, that is the February 24th Lehmkuhl
6 memorandum.

7 JUDGE SIPPEL: Objection?

8 MR. BEGLEITER: None, Your Honor.

9 JUDGE SIPPEL: It's received in evidence as --
10 both marked for identification and received in evidence as
11 TW/CV 32.

12 (The document referred to was
13 marked for identification as
14 TW/CV Exhibit Number 32 and
15 was received in evidence.)

16 Next?

17 MR. BECKNER: Okay. Just give me a second if you
18 don't mind.

19 JUDGE SIPPEL: Go off the record.

20 (A discussion was held off the record.)

21 JUDGE SIPPEL: Mr. Beckner, we're back on the
22 record.

23 MR. BECKNER: Okay. Exhibit 33 is a letter -- is
24 a copy of a letter from Henry Rivera to Regina Keenie
25 (phonetic) at the FCC. And the letter is also signed by

1 other lawyers for Liberty Cable. And it's dated August 14,
2 1995.

3 JUDGE SIPPEL: Okay. That will be marked for
4 identification as TW/CV Number 33.

5 (The document referred to was
6 marked for identification as
7 TW/CV Exhibit Number 33.)

8 MR. BECKNER: And I'd prefer to discuss the
9 relevance of this at the time I'm examining a witness. I'm
10 not entirely sure I'm going to use it, but I might.

11 JUDGE SIPPEL: Okay. That's five pages by my
12 count.

13 MR. BECKNER: That's correct. And let me just add
14 in anticipation of a comment perhaps, Mr. Begleiter, it's
15 not my intent to use this document to get into the internal
16 audit report. And I make that representation as I did with
17 the previous exhibits.

18 JUDGE SIPPEL: All right. Any objection?

19 MR. BEGLEITER: Yes, I object to it being the only
20 subject matter I can see here is the -- is the internal
21 audit report. And on this day, there was a report.

22 JUDGE SIPPEL: Well, I'm inclined to -- I'm
23 certainly inclined to agree with Mr. Begleiter on this one.
24 Is there --

25 MR. BECKNER: Your Honor, I mean, I don't want to

1 be obscure with anybody. The second paragraph of the letter
2 is the one that I'm interested in on the first page. And it
3 says that, "Seventeen of these paths were discovered as a
4 result of Liberty's internal investigation." And as we know
5 there were a total of 19 paths. That's the particular --
6 that's the only piece of this letter that I'm interested in
7 at all which has to do with what are -- you know, what they
8 discovered and when they discovered it. And this is just a
9 little piece of evidence about that. As I say, I can't say
10 definitely I'm going to use it. I'm just going to have to
11 say what the witnesses say.

12 JUDGE SIPPEL: Well, none of the witnesses may
13 even be privy to this letter. Perhaps Mr. Price was. But -
14 -

15 MR. BECKNER: Well, they may not be privy to it,
16 but, you know, presumably Mr. Price knows how many paths
17 were discovered -- you know, they discovered on their own
18 and how many were brought to their attention by Time Warner.
19 And if -- you know, if -- if his knowledge is inconsistent
20 with what's being represented here, I think that's, you
21 know, something that belongs in the record.

22 JUDGE SIPPEL: Well, I'm going to reject it. I'm
23 going to sustain the objection for two reasons. One, the --
24 the relevance is really too tangential if it's only for that
25 one sentence. And secondly, I don't even want to give --

1 have anything that looks like an appearance that I'm trying
2 to delve behind that claim of privilege for that evidence.
3 So I'm not going to receive it into evidence. That's
4 rejected for all time.

5 MR. BECKNER: I think my colleague here means to
6 speak. So do you want to -- I don't mean to preempt him.

7 JUDGE SIPPEL: I'm sorry. I want to give
8 everybody -- I want to give everybody a chance.

9 MR. HOLT: I would simply note, Your Honor, that
10 this document was I believe submitted to the Commission in
11 response to the August 4th 308(b) request that was received
12 into evidence as Exhibit 28 and I believe also provides a --
13 a date by which Liberty was providing information to the
14 Commission about its knowledge concerning -- it kind of
15 frames the -- the end of the investigation.

16 And I would suggest that if -- that it might be
17 appropriate to receive it into evidence only to the extent
18 that paragraph 2 -- let me -- that's unartfully said. What
19 I would suggest is that perhaps it would be appropriate to
20 receive into the evidence striking all portions except for
21 paragraph 2 which doesn't discuss the internal audit but
22 does discuss knowledge and provides a date and it is in
23 response to the 308(b) letter.

24 JUDGE SIPPEL: Would you have any objection to
25 that, Mr. Begleiter?

1 MR. BEGLEITER: We're not agreeing with Mr. Holt's
2 characterization, providing a date. I don't know what he
3 means about providing a date since --

4 JUDGE SIPPEL: Well, that's a good question. I
5 think -- I'm assuming that to mean August 14th is the date
6 of the letter --

7 MR. HOLT: Right.

8 JUDGE SIPPEL: -- not the date of the disclosure.

9 MR. HOLT: No, no. But it does frame the response
10 to the 308(b) letter and we could work off of this date to
11 discuss knowledge at certain times in the sequence.

12 MR. BEGLEITER: I don't know -- I just don't
13 understand his point. I'm sorry. We've -- we have already
14 a document which discusses 13 buildings that were disclosed
15 by Liberty. We have a document that discusses two buildings
16 that were disclosed by Time Warner. And we have other
17 documents discussing the four buildings where STAs were
18 requested and applications were made in July.

19 So, therefore, by sometime in July, there's no
20 doubt that the FCC was aware -- and as a matter of fact,
21 Your Honor, if you take a look at the letter that you --
22 that you accepted into evidence, I think it's 28, there's a
23 discussion -- the opening paragraph talks about -- about the
24 FCC being aware of those four paths. So if anything, I
25 think we can almost concede that by the -- I mean we can

1 concede that by the date of -- by August 4th, the -- the
2 Commission knew about all these buildings. I don't know
3 what this other letter does.

4 MR. HOLT: Well, again --

5 MR. BEGLEITER: I mean, it does show 1,808
6 subscribers.

7 MR. HOLT: Again, it discusses the fact that as of
8 August 14th, they had knowledge of 19 paths, that 17 were
9 uncovered apparently as a result of an internal audit report
10 that was reported on this date. It does go into the
11 question of who knew what when.

12 JUDGE SIPPEL: I'm not -- it's -- that is -- and
13 not one of these -- not one of these people will be
14 testifying nor should they be testifying who wrote the
15 letter. So I'm going to stick with my ruling. Okay. Are
16 there any more documents?

17 MR. BECKNER: There's one more. May we mark this
18 for identification in the event that we want to make a
19 further showing of relevance during --

20 JUDGE SIPPEL: Oh, as a rejected exhibit?

21 MR. BECKNER: Yes, sir.

22 JUDGE SIPPEL: As a rejected exhibit, yes.

23 MR. BEGLEITER: I thought Your Honor had indicated
24 it was rejected for all time.

25 JUDGE SIPPEL: Well, I'm not going to consider it.

1 I'm not going to consider it for anything. But if he wants
2 it marked as -- the only way the record is going to show
3 what I rejected is to mark it for identification.

4 MR. BEGLEITER: Oh, I see. Okay.

5 JUDGE SIPPEL: But I'm -- I am going to reject it
6 for all times.

7 MR. BEGLEITER: Okay.

8 JUDGE SIPPEL: This document will be marked --
9 this is Number 33. And it is the letter dated August 14th,
10 1995 that we've just been discussing. It's a five page
11 letter. And that will be marked for identification as TW/CV
12 Number 33 and it is rejected as evidence in this case. And
13 that's an absolute reject. It's not subject to being re-
14 offered.

15 (The document referred to,
16 previously marked for
17 identification as TW/CV
18 Exhibit Number 33, was
19 rejected.)

20 Next document.

21 MR. BECKNER: The next document, Your Honor, is
22 the April 28, 1995 memorandum from Mike Lehmkuhl to Behrooz
23 Nourain with a CC to Peter Price. That's at Tab 40. That's
24 the one that we just received on Monday.

25 I want to note for the record that the last --

1 this is a five page exhibit. And the last page of the
2 exhibit is simply something that's generated by the fax
3 machine that's called a transmit confirmation report. And
4 the report indicates that five pages were transmitted. And
5 we only have four pages that are in this exhibit. So I just
6 note that at least from the machine, there appears to be a
7 fifth page out there. Now, maybe it was just a cover page
8 or maybe it was something else. I don't know.

9 JUDGE SIPPEL: Well, Mr. Begleiter?

10 MR. BEGLEITER: Well, actually, we did ask Mr.
11 Lehmkuhl and he said that this is the complete document that
12 he has in his files.

13 MR. HOLT: Your Honor, this was part of the
14 discussion that I had with counsel last week and was part of
15 the concerns that I had. I also asked counsel to check the
16 files of Liberty to ascertain a copy of this document that
17 contained the missing fifth page was in Liberty's files.
18 And I received a refusal. And that's part and parcel of --
19 of the dispute that's come up about the thoroughness of the
20 investigation and the need for complete documents from
21 Liberty's files.

22 JUDGE SIPPEL: Well, let me ask, has Liberty's
23 files been checked to see if there's a different copy of
24 this or -- I mean, a copy that would have an additional page
25 or some other element to it?